

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

DAVID E. PARKER,

Plaintiff,

versus

UNITED STATES OF AMERICA,

Defendant.

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CIVIL ACTION NO. 1:20-CV-342

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff David E. Parker, a prisoner previously confined at the United States Penitentiary in Beaumont, Texas, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against the United States of America.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the action pursuant to 28 U.S.C. § 1915(e).

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes

the objections are without merit. The United States has not waived sovereign immunity for alleged constitutional violations and is immune from suit. *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 410 (1971). Therefore, plaintiff has failed to state a claim upon which relief may be granted. To the extent that plaintiff's claims could liberally construed as an action arising under the Federal Tort Claim Act, plaintiff is barred from filing suit in federal court until he exhausts administrative tort remedies. *McNeil v. United States*, 508 U.S. 106, 113 (1993). Although plaintiff filed inmate grievances concerning his claims, he did not pursue his tort claims by filing administrative tort remedies with the appropriate government agency.

ORDER

Accordingly, plaintiff's objections (#6) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (#3) is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 23rd day of March, 2021.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE